

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-127

3 State of New Hampshire Banking)

4 Department,)

5) Order to Show Cause

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15 NOTICE OF ORDER

16 This Order commences an adjudicative proceeding under the provisions
17 of RSA 397-A and RSA 541-A.

18 LEGAL AUTHORITY AND JURISDICTION

19 Pursuant to RSA 397-A:17, the Banking Department of the State of New
20 Hampshire (hereinafter the "Department") has the authority to issue an order
21 to show cause why license revocation and penalties for violations of New
22 Hampshire Banking laws should not be imposed.

23 Pursuant to RSA 397-A:18, the Department has the authority to issue a
24 complaint setting forth charges whenever the Department is of the opinion
25 that the licensee or person over whom the Department has jurisdiction is
violating or has violated any provision of RSA Chapter 397-A, or any rule or
order thereunder.

Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or
rescind such orders as are reasonably necessary to comply with the
provisions of the Chapter.

1 Pursuant to RSA 397-A:21, the Commissioner has the authority to
2 suspend, revoke or deny any license and to impose administrative penalties
3 of up to \$2,500.00 for each violation of New Hampshire banking law and
4 rules.

5 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
6 that is or may be an unfair or deceptive act or practice under RSA 358-A and
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
9 Commissioner may hold hearings relative to such conduct and may order
10 restitution for a person or persons adversely affected by such conduct. The
11 Commissioner may utilize all remedies available under the Consumer
12 Protection Act.

13 **NOTICE OF RIGHT TO REQUEST A HEARING**

14 The above named Respondents have the right to request a hearing on
15 this Order to Show Cause, as well as the right to be represented by counsel
16 at each Respondent's own expense. All hearings shall comply with RSA 541-A.
17 Any such request for a hearing shall be in writing, and signed by the
18 Respondent or the duly authorized agent of the above named Respondent, and
19 shall be delivered either by hand or certified mail, return receipt
20 requested, to the Banking Department, State of New Hampshire, 53 Regional
21 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
22 10 days of the Department's receipt of the request. If the Respondent fails
23 to appear at the hearing after being duly notified, such person shall be
24 deemed in default, and the proceeding may be determined against the Respondent
25 upon consideration of the Order to Show Cause, the allegations of which may be

1 deemed to be true.

2 If any of the above named Respondents fails to request a hearing within
3 30 calendar days of receipt of such order or reach formal settlement with the
4 Department within that time frame, then such person shall likewise be deemed
5 in default, and the orders shall, on the thirty-first day, become permanent,
6 and shall remain in full force and effect until and unless later modified or
7 vacated by the Commissioner, for good cause shown.

8 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

9 The Staff Petition dated January 5, 2009 (a copy of which is attached
10 hereto) is incorporated by reference hereto.

11 **ORDER**

12 WHEREAS, finding it necessary and appropriate and in the public
13 interest, and consistent with the intent and purposes of the New Hampshire
14 banking laws, and

15 WHEREAS, finding that the allegations contained in the Staff Petition,
16 if proved true and correct, form the legal basis of the relief requested,

17 It is hereby ORDERED, that:

- 18 1. Respondent MG Financial Corporation (d/b/a CFG Refi)
19 ("Respondent MG Financial") shall show cause why penalties in
20 the amount of \$17,500.00 should not be imposed against it;
21 2. Respondent Gail L. Luciano ("Respondent Luciano") shall show
22 cause why penalties in the amount of \$25,000.00 should not be
23 imposed against her;
24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 fine for \$200.00 for the late filing of the 2005 annual
2 report should not be paid to the Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above,
5 statutory penalties of \$2,500.00 should not be imposed for
6 failing to file the 2006 annual report;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 3 above, the
9 accrued fine of \$44,400.00 for failing to provide examination
10 materials(and still accruing)should not be paid to the
11 Department;

12 6. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 4 above, the
14 \$500.00 examination fee should not be paid to the Department;

15 7. The above named Respondents shall be jointly and severally
16 liable for the above amounts alleged in Paragraphs 1 through
17 5 above;

18 8. The above named Respondents shall show cause why, in addition
19 to the penalties listed in Paragraphs 1 through 6 above,
20 Respondent MG Financial's license should not be revoked.

21 It is hereby further ORDERED that:

22 9. Along with the administrative penalties listed for the above
23 named Respondents, the outstanding sum of \$47,600.00 shall be
24 immediately paid; and
25

1 10. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s) .

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6 SIGNED,

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8 Dated: 01/05/08

/s/

 PETER C. HILDRETH
 BANK COMMISSIONER

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 07-127
 State of New Hampshire Banking)
 Department,) Staff Petition
 Petitioner,) January 5, 2009
 and)
 MG Financial Corporation (d/b/a CFG)
 Refi), and Gail L. Luciano,)
 Respondents)

I. STATEMENT OF ALLEGATIONS

The Staff of the Banking Department, State of New Hampshire (hereinafter "Department") alleges the following facts:

Facts Common on All Counts:

1. Respondent MG Financial Corporation (d/b/a CFG Refi) (hereinafter "Respondent MG Financial") was licensed as a Mortgage Broker from at least April 18, 2005 (refiled January 13, 2006) until its license expired December 31, 2006.

2. Respondent Gail L. Luciano (hereinafter "Respondent Luciano") was the President, Chief Executive Officer and Director of Respondent MG Financial.

Violation of RSA 397-A:13, IV Failure to Pay Late Penalty Owed for Late

Filing of 2005 Annual Report (1 Count):

3. Paragraphs 1 through 2 are hereby realleged as fully set forth herein.

4. Respondent MG Financial was licensed in 2005 and 2006 and

1 therefore, subject to the filing of an annual report of business.

2 5. Respondent MG Financial's 2005 annual report was due on or before
3 February 1, 2006.

4 6. Respondent MG Financial filed its 2005 annual report 8 days late
5 on February 9, 2006, generating a fine of \$200.00 (\$25.00 a day x
6 8 days).

7 7. The Department sent the above named Respondents invoices on
8 February 9, 2006, April 7, 2006, and April 24, 2006.

9 8. The Department mailed another letter on May 1, 2006.

10 9. To date, Respondent MG Financial has failed to pay the \$200.00
11 late filing of an annual report fee.

12 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

13 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
14 Files (1 Count):

15 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
16 Files (1 Count):

17 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
18 Department Inquiries (2 Counts):

19 Violation of RSA 397-A:10,IV Failure to Update Information on File with
20 Commissioner (2 Counts):

21 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
22 herein.

23 11. The Department conducted an examination of Respondent MG Financial
24 on July 31, 2006, while Respondent MG Financial was still
25 licensed with the Department.

1 12. On June 23, 2006, the Department sent the notice of examination to
2 Respondent MG Financial via U.S. Certified Mail Return Receipt
3 requested, which was returned as undeliverable.

4 13. The Department attempted unsuccessfully to contact Respondent
5 Luciano via facsimile.

6 14. On July 10, 2006, the Department sent an email to Respondent
7 Luciano, which the read receipt evidenced it was read on July 10,
8 2006 by the recipient.

9 15. Respondent Luciano telephoned the Department on July 14, 2006 and
10 explained Respondent MG Financial had moved and provided updated
11 information, including new telephone and facsimile numbers.

12 16. During the July 14, 2006 telephone call to the Department,
13 Respondent Luciano further stated her intent to surrender the
14 license, at which point the Department explained the Department
15 would still conduct an examination if Respondent MG Financial
16 surrendered its license.

17 17. A Department Examiner emailed Respondent Luciano on July 14, 2006
18 with an officer's questionnaire to be completed by the above
19 named Respondents.

20 18. Respondent Luciano received and read the email on July 14, 2006,
21 as evidenced by the read receipt.

22 19. The above named Respondents failed to inform the Commissioner of
23 the new address and contact information prior to the June 23,
24 2006 notice of examination sent by the Department.

25 20. The June 23, 2006 notice of examination required the Respondent to

1 submit the following documents:

2 a. A list of all New Hampshire files of loans that the licensee
3 originated, funded, closed, denied, or that were withdrawn,
4 canceled or serviced by the licensee during the period 18
5 months prior to the date of this notice;

6 b. A copy of the most recent year-end financial statement, SEC 10-
7 K and 10-Q if applicable, and most recent Federal Income Tax
8 return;

9 c. A copy of the most recent quarterly financial statement;

10 d. Work papers and copies of source documents to support the
11 figures submitted on the company's most recently filed New
12 Hampshire Annual Report; the work papers shall demonstrate the
13 actual calculation of the numbers for verification by the
14 department; and

15 e. A list on Schedules A and B of the license application form of
16 the current direct owners, indirect owners and all principals
17 of the company.

18 21. On July 14, 2006, a copy of the June 23, 2006 notice of
19 examination and the officer's questionnaire were sent to the
20 above named Respondents' new address in Florida via U.S.
21 Certified Mail Return Receipt, which the above named Respondents
22 received on July 19, 2006.

23 22. With no response from the above named Respondents, the Department
24 sent an email to Respondent Luciano on September 29, 2006 again
25 requesting the examination materials.

23. To date, the Department has not received an acknowledgment nor the examination materials.

24. To date, fines have accrued for failing to provide the requested files. The current fine to date is \$44,400.00 (\$50.00 a day x 888 days) and still accruing.

Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):

Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

Department Inquiries (1 Count):

25. Paragraphs 1 through 24 are hereby realleged as fully set forth herein.

26. The Department conducted an examination of Respondent MG Financial on July 31, 2006, while Respondent MG Financial was still licensed with the Department.

27. On October 27, 2006, the Department mailed the report of examination and invoice for \$500.00 to Respondent MG Financial, via U.S. Certified Mail Return Receipt requested, which Respondents received on December 1, 2006.

28. The above named Respondents failed to respond to the October 27, 2006 correspondence from the Department.

29. The Department, via U.S. mail, mailed a second notice on December 6, 2006 and a third notice on January 26, 2007.

30. The above named Respondents did not respond to any of the three notices for payment of the \$500.00 invoice.

31. To date, the above named Respondents still owe the \$500.00 examination fee for the one day examination.

Violation of RSA 397-A:13, I Failure to File Annual Report (1 Count):

32. Paragraphs 1 through 31 are hereby realleged as fully set forth herein.

33. Respondent MG Financial was licensed in 2006, and thus subject to the filing of a 2006 annual report with the Department.

34. The 2006 annual report was due on or before February 1, 2007.

35. On January 8, 2007, the Department sent an email notification to Respondent MG Financial stating the annual report was due the Department.

36. On February 2, 2007, the Department submitted facsimile reminder notices to all licensees who had not filed their 2006 annual report, which include the above named Respondents.

37. On March 5, 2007, the Department sent a final notice to the above named Respondents via U.S. Certified Mail Return Receipt, which the Respondents received on March 7, 2007.

38. To date, Respondent MG Financial has failed to file the 2006 annual report.

39. To date, the penalty for failing to file an annual report has accrued to the cap of \$2,500.00.

II. ISSUES OF LAW

The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in Paragraphs 1 through 39 as fully set forth herein.

2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities

1 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

2 3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
3 397-A are under a continuing obligation to update information on
4 file with the Commissioner. Each of the above named Respondents
5 failed to update the Commissioner on at least two occasions as
6 alleged above.

7 4. RSA 397-A:11,II provides that requested files and business records
8 must be received by the Department within 21 calendar days of
9 request. The licensee will be subject to a \$50.00 a day fine
10 every day after the 21-day period the records are not produced.
11 Each of the above named Respondents violated this provision on at
12 least one occasion as alleged above. Respondents currently owe
13 \$44,400.00 to date and the fine is still accruing.

14 5. RSA 397-A:12,III requires licensees to comply with examination
15 requests with or without prior notice. All books, papers, files,
16 related material, and records of assets shall be subject to the
17 Department's examination. Each of the above named Respondents
18 violated this statute on at least one occasion as alleged above.

19 6. RSA 397-A:12,V provides that the expense of such examination shall
20 be chargeable to and paid by the licensee. Each of the above
21 named Respondents violated this provision on at least one
22 occasion as alleged above. To date, the above named Respondents
23 have failed to pay the \$500.00 examination invoice.

24 7. RSA 397-A:12,VII provides that every person being examined, and
25 all of the officers, directors, employees, agents, and

1 representatives of such person shall make freely available to the
2 Commissioner or his or her examiners, the accounts, records,
3 documents, files, information, assets, and matters in their
4 possession or control relating to the subject of the examination
5 and shall facilitate the examination. Each of the above named
6 Respondents violated this statute on at least one occasion as
7 alleged above.

8 8. RSA 397-A:13,I provides that a licensee shall file its annual
9 report on or before February 1 each year concerning operations
10 for the preceding year or license period ending December 31.
11 Each of the above named Respondents violated this provision on at
12 least one occasion as alleged above.

13 9. RSA 397-A:13,IV provides that any mortgage banker or mortgage
14 broker failing to file either the annual report or the financial
15 statement required by RSA Chapter 397-A within the time
16 prescribed may be required to pay to the Department a penalty of
17 \$25.00 for each calendar day the annual report or financial
18 statement is overdue, up to a maximum penalty of \$2,500.00 per
19 report or statement. Each of the above named Respondents violated
20 this provision on at least one occasion as alleged above. The
21 above named Respondents filed a 2005 annual report, that was 8
22 days late, and incurred a penalty of \$200.00.

23 10. RSA 397-A:13,VI provides that any officer, owner, manager or
24 agent of any licensee shall reply promptly in writing, or other
25 designated form, to any written inquiry from the Department.

Respondent Luciano violated this provision on at least three occasions as alleged above.

11. RSA 397-A:18, I provides that the Department may issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction, has violated any provision of RSA Chapter 397-A or orders thereunder.

12. RSA 397-A:21, IV provides that any person who, either knowingly or negligently, violates any provision of RSA Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500.00, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

13. RSA 397-A:21, V provides that every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or

1 denial of any registration or license, including the forfeiture of
2 any application fee, or the imposition of an administrative fine
3 not to exceed \$2,500, or both. Each of the acts specified shall
4 constitute a separate violation, and such administrative action or
5 fine may be imposed in addition to any criminal or civil penalties
6 imposed.

7 **III. RELIEF REQUESTED**

8 The staff of the Department requests the Commissioner take the following
9 action:

- 10 1. Find as fact the allegations contained in section I of this Staff
11 Petition;
- 12 2. Make conclusions of law relative to the allegations contained in
13 section II of this Staff Petition;
- 14 3. Pursuant to RSA 397-A:17, order each of the above named
15 Respondents to show cause why their license should not be revoked;
- 16 4. Assess fines and administrative penalties in accordance with RSA
17 397-A:21, for violations of Chapter 397-A, in the number and amount
18 equal to the violations set forth in section II of this Staff
19 Petition; and
- 20 5. Take such other administrative and legal actions as necessary for
21 enforcement of the New Hampshire Banking Laws, the protection of
22 New Hampshire citizens, and to provide other equitable relief.

1 IV. RIGHT TO AMEND

2 The Department reserves the right to amend this Staff Petition and to
3 request that the Commissioner take additional administrative action.
4 Nothing herein shall preclude the Department from bringing additional
5 enforcement action under RSA 397-A or the regulations thereunder.

6 Respectfully submitted by:

7
8 /s/
Maryam Torben Desfosses
9 Hearings Examiner

01/05/09
Date